

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/06/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.37097 OF 2002

Padmini Sivasubramaniam

W/o. late K.N.P. Sivasubramaniam .. Petitioner

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Govt.,
Revenue Department,
Fort St. George,
Chennai 600 009.

2. The District Collector,
Coimbatore District,
Coimbatore.

3. Tiruppur Sports Organisation,
rep. by its President,
Mr.Ravi .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorari as stated therein.

For Petitioner : Mrs.Nalini Chidambaram
Senior Counsel for
Mr.S. Silambanan

For Respondents 1-2 : Mrs.Thenmozhi Sivaperumal
A.G.P.,
Respondent-3 : Mr.A. Udayakumar

:J U D G M E N T

The petitioner has prayed for issuance of writ of certiorarified
mandamus to call for the records relating to G.O.Ms.No.1136 dated 29.10.96
issued by the first respondent and quash the same and direct the respondents 1
and 2 to resume the land measuring an extent of 3.71.0 hectares of the lands
in S.No.655/1, 673/1, 673/2, 673/2A in Rakeepalayam Village, Nallur Town
Panchayat, Tiruppur Taluk, Coimbatore District from the third respondent and

reconvey the said land to the petitioner on payment by the petitioner of Rs.12,86,914/- to the third respondent.

2. Vast area of lands, including some land which had fallen to the share of the petitioner's husband had been acquired before 1968. At that time the purpose was to develop the land as Tanks. After acquisition proceedings were completed, award had been made and compensation had been paid. The land had remained unutilised. Subsequently, however, a portion of the land has been transferred to the third respondent which is a private sports organisation. The land is sought to be given to such sports organisation for setting up a sports complex. Accordingly, a Government Order has been issued in favour of the third respondent subject to certain conditions. The petitioner's grievance is to the effect that since the land was not required for the purpose for which it was acquired, there was no justification to

transfer a part of the land to a private sports organisation and the land should be re-transferred to the petitioner for the very same amount for which it was transferred to the third respondent.

3. It is contended that the Government Order effecting transfer in favour of the third respondent is legally impermissible and is liable to be quashed. It is further contended that at any rate the land can be given only for another public purpose and in the present case, it has been given for activities of sports which do not fall within the category of public purpose. It has been further contended that Section 38A of the Land Acquisition Act provides acquisition of the land for private persons and since those conditions have not been fulfilled in the present case, prayer has been made for quashing G.O.Ms.No.11 36 dated 29.10.1996.

4. A counter affidavit has been filed on behalf of respondent No.2. The sum and substance of the counter affidavit is to the effect that though the land has been initially acquired for development as Tank, subsequently the land was alienated for public purpose, i.e., for the purpose of forming a sports stadium. It is stated that the petitioner has no right to challenge such subsequent action taken by the Government.

5. Learned senior counsel appearing for the petitioner has vehemently contended that since the land was sought to be transferred to a private body, it has to satisfy the requirements contained in Part VII of the Act. Part VII relates to acquisition of lands for companies. Section 39 relates to previous consent of appropriate Government and relating to necessity of execution of agreement as contemplated. Section 40 relates to procedure for grant of consent and clauses (a)(aa) and (b) of Section 40(1) contemplate the satisfaction to be arrived at. Section 40(1)(b) is to the effect that the appropriate Government should be satisfied that such acquisition is needed for construction of some work, which is likely to prove useful to the public.

6. In the present case, of course the land was not acquired for a company. It was acquired for public purpose by the Government itself for maintaining a Tank. Therefore, strictly speaking it was not necessary for the

Government to satisfy the requirements contained in Section 40 of the Act. After the land is acquired and vested with the Government, it can be used for any other public purpose. Such user can be by the Government itself or by some other agency or by a private individual. Even though it may be necessary for being satisfied about the existence of some public purpose or public utility, in the present case, it cannot be said that construction of a sports complex is not for public purpose. If the standard of Section 40(1) is applied, it is apparent that construction of a sports complex even by a private individual shall prove to be useful to the public.

7. In the present case, the petitioner is seeking to quash the Government Order which has been issued in the year 1996. The writ petition has been filed in the year 2002, after a long lapse of time. It is true that the petitioner has averred that she was not aware of the issuance of G.O., in favour of the third respondent since the land was lying vacant and no activities were carried out. Even assuming so, since the land has been validly acquired, it is not open to the petitioner to claim that the land cannot be put to any other use

8. It is of course true that the Land Acquisition Act has been amended in the State of Tamil Nadu by The Land Acquisition (TamilNadu) Amendment Act, 1996. As per Section 48-B it is open to the Government to transfer such acquired land to the original owner who is willing to repay the amount paid to him under the Act for acquisition of such land. In the present case, the petitioner had never made any earlier representation to the Government to take advantage of Section 48-B. On the other hand, it appears that even before such amendment had been made and provision was brought into force, the Government had taken steps to alienate the land in favour of the third respondent for constructing a sports complex.

9. For the aforesaid reasons, I do not find any merit in the writ petition, which is dismissed. No costs.

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To

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